

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

JERALD S. GALVAN,

Plaintiff,

vs.

CITY OF TACOMA, THE TACOMA
POLICE DEPARTMENT and OFFICERS
ANDERSON Badge No. 260 and
KOMAROVSKY Badge No. 241, JOHN
and JANE DOES 1-5

Defendants.

No. 3:23-cv-05237-BJR

Defendants' Answer to Plaintiff's
Complaint for Damages

COMES NOW the Defendants City of Tacoma, Anderson, and Komarovksy (hereinafter collectively as "Defendants") – by and through their undersigned attorneys – to offer the following response to Plaintiff's *Complaint for Damages* filed with the Pierce County Superior Court on February 3, 2023 (hereinafter the "Complaint") prior to removal to this Court, and to assert various affirmative defenses. In the event that the Defendants, through this Answer, inadvertently fails to respond to any factual assertion contained within the Complaint that is properly asserted against the Defendants, the Defendants denies the same. It should be noted that the Defendants, through this Answer, admits some of the allegations set out in Plaintiff's

Answer to Plaintiff's Complaint

Tacoma City Attorney
Civil Division
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Tacoma, WA 98402-3767
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1 Complaint in good faith; however, if subsequent discovery establishes that these allegations are
2 false, the Defendants reserve the right to amend its Answer accordingly.

3 The Defendants now admit, deny, and allege as follows:

4 [Plaintiff's Statement on the] Nature of the Claim

5 1. In response to Paragraph 1 of the Complaint, the Defendants admit that Plaintiff
6 brings this lawsuit and is seeking monetary damages for violations of Federal and State law.
7 Defendants deny that there is merit to Plaintiff's claims and Defendants deny Plaintiff is entitled
8 to recovery monetary damages from the Defendants through this action.

9 [Plaintiff's Claims regarding] Jurisdiction

10 2. In response to Paragraph 2 of the Complaint, the Defendants admit the City of
11 Tacoma is a municipal corporation properly operating within the State of Washington that has
12 its principal offices in Tacoma, Pierce County, Washington.

13 3. In response to Paragraph 3 of the Complaint, the Defendants do not take a position
14 on personal jurisdiction of this case by the Pierce County Superior Court, as this case has been
15 properly and successfully removed to the above Court. The Defendants admit that this Court
16 has personal jurisdiction over the Defendants.

17 [Plaintiff's Claims regarding] Venue

18 4. In response to Paragraph 4 of the Complaint, the Defendants do not take a position
19 on venue of the case within the Pierce County Superior Court, as this case has been properly and
20 successfully removed to the above Court. The Defendants admit that the venue is proper in this
21 Court.
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Parties

5. In response to Paragraph 5 of the Complaint, the Defendants have insufficient information or knowledge to admit or deny; however, the Defendants admit in good faith that Plaintiff resides in Pierce County, Washington State.

6. In response to Paragraph 6 of the Complaint, the Defendants admit that the events that Plaintiff has put at issue in this case occurred within Pierce County, Washington State.

7. In response to Paragraph 7 of the Complaint, the Defendants admit that Officers Anderson and Komarovsky were employees of the City of Tacoma on February 14, 2020. To provide a complete response to the remaining allegations set out in Paragraph 7 of the Complaint, the Defendants would need to conduct legal analysis or offer legal conclusions – which is not required. To the extent a further response is required, Defendants assert that they will not contest that the individually named Officers were acting within the course and scope of their employment with the City at all times relevant to this lawsuit; however, Defendants deny that any tortious conduct occurred and Defendants deny that they are liable to Plaintiff in any capacity in this case.

8. In response to Paragraph 8 of the Complaint, the Defendants are not familiar with John Does 1-5 and, as a result, have insufficient information or knowledge to admit or deny the allegations set out in this Paragraph and, therefore, deny the same.

[Plaintiff's] Statement of Claim

9. In response to Paragraph 9 of the Complaint, the Defendants incorporate their responses to Paragraphs 1-8 herein by reference.

10. In response to Paragraph 10 of the Complaint,

1 a. Defendants have insufficient information or knowledge to admit or deny
2 Plaintiff's allegations about the February 14, 2020 collision as Defendants were not present. It
3 follows that Defendants deny the allegations set out in the first two sentences of Paragraph 10.

4 b. Defendants admit that Plaintiff called 911 on March 14, 2020.

5 c. Defendants deny that when "the police arrived, they asked Mr. Galvan
6 about his gun."

7 d. Defendants deny that Plaintiff stated to the responding officers that "he
8 did not have his gun on him."

9 e. Defendants deny Plaintiff's version of the events when he states in this
10 Paragraph that "to show them he did not have his gun Mr. Galvan raised his jacket to show that
11 his holster was empty."

12 f. Defendants deny that "when the officers saw his holster, they all jumped
13 on him."

14 g. Defendants deny that Plaintiff was placed in "a choke hold."

15 h. Defendants deny that any of their actions caused Plaintiff to "lose
16 consciousness." Further, as Defendants deny that "a choke hold" was utilized, Defendants deny
17 Plaintiff lost consciousness "as a result of being placed in a choke hold."

18 i. Defendants admit that Plaintiff was placed in handcuffs; however,
19 Defendants have insufficient information or knowledge to admit or deny the remaining factual
20 allegations set out in the seventh sentence in Paragraph 10.

21 j. Defendants have insufficient information or knowledge to admit or deny
22 the eighth sentence in Paragraph 10 and, as a result, Defendants deny the same. By way of
23 further response to the eighth sentence in Paragraph 10, see responses above.
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1 11. In response to Paragraph 11 of the Complaint, the Defendants admit that medical
2 aid responded to the scene and evaluated Plaintiff following the complained of incident on
3 February 14, 2020.

4 12. In order for Defendants to offer a complete response to Paragraph 12 of the
5 Complaint, the Defendants would have to conduct legal analysis or offer legal conclusions –
6 which is not required. To the extent a further response is required, Defendants deny that
7 Defendants engaged in any “unlawful action” and – by extension – Defendants deny that they
8 caused Plaintiff to incur any compensable damages.

9 13. In order for Defendants to offer a complete response to Paragraph 13 of the
10 Complaint, the Defendants would have to conduct legal analysis or offer legal conclusions –
11 which is not required. To the extent a further response is required, Defendants admit that a *City*
12 *of Tacoma Claim for Damages Form* relating to the complained of incident was provided to the
13 Office of the City Clerk for the City of Tacoma on October 24, 2022. Defendants further admit
14 that more than sixty days elapsed between the provision of the aforementioned *Form* and the
15 filing of the Complaint on February 3, 2020 with the Pierce County Superior Court. Defendants
16 do not plan to contest that Plaintiff complied with the requirements of RCW 4.96.020 in relation
17 to this action.
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19 [Plaintiff’s alleged Cause of Action in] Assault and Battery

20 14. In response to Paragraph 14 of the Complaint, the Defendants incorporate their
21 responses to Paragraphs 1-13 herein by reference.

22 15. In order for Defendants to offer a complete response to Paragraph 15 of the
23 Complaint, the Defendants would have to conduct legal analysis or offer legal conclusions –
24 which is not required. To the extent a further response is required, Defendants deny.
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1 16. In order for Defendants to offer a complete response to Paragraph 16 of the
2 Complaint, the Defendants would have to conduct legal analysis or offer legal conclusions –
3 which is not required. To the extent a further response is required, Defendants deny.

4 17. In order for Defendants to offer a complete response to Paragraph 17 of the
5 Complaint, the Defendants would have to conduct legal analysis or offer legal conclusions –
6 which is not required. To the extent a further response is required, Defendants deny.

7 [Plaintiff's alleged Causes of Action regarding] Violation of 42 U.S.C. § 1983 and the Fourth,
8 Fifth, and Fourteenth Amendment to the United States Constitution

9 18. In response to Paragraph 18 of the Complaint, the Defendants incorporate their
10 responses to Paragraphs 1-17 herein by reference.

11 19. In order for Defendants to offer a complete response to Paragraph 19 of the
12 Complaint, the Defendants would have to conduct legal analysis or offer legal conclusions –
13 which is not required. To the extent a further response is required, Defendants deny.

14 20. In order for Defendants to offer a complete response to Paragraph 20 of the
15 Complaint, the Defendants would have to conduct legal analysis or offer legal conclusions –
16 which is not required. To the extent a further response is required, Defendants deny.

17 [Plaintiff's alleged Cause of Action in] Negligence

18 21. In response to Paragraph 21 of the Complaint, the Defendants incorporate their
19 responses to Paragraphs 1-20 herein by reference.

20 22. In order for Defendants to offer a complete response to Paragraph 22 of the
21 Complaint, the Defendants would have to conduct legal analysis or offer legal conclusions –
22 which is not required. To the extent a further response is required, Defendants deny.
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23. In order for Defendants to offer a complete response to Paragraph 23 of the Complaint, the Defendants would have to conduct legal analysis or offer legal conclusions – which is not required. To the extent a further response is required, Defendants deny.

[Plaintiff's Allegations regarding] Causation and Damages

24. In response to Paragraph 24 of the Complaint, the Defendants incorporate their responses to Paragraphs 1-23 herein by reference.

25. In order for Defendants to offer a complete response to Paragraph 25 of the Complaint, the Defendants would have to conduct legal analysis or offer legal conclusions – which is not required. To the extent a further response is required, Defendants deny.

26. In order for Defendants to offer a complete response to Paragraph 26 of the Complaint, the Defendants would have to conduct legal analysis or offer legal conclusions – which is not required. To the extent a further response is required, Defendants deny.

27. In order for Defendants to offer a complete response to Paragraph 27 of the Complaint, the Defendants would have to conduct legal analysis or offer legal conclusions – which is not required. To the extent a further response is required, Defendants deny.

[The second Paragraph numbered] 27. In order for Defendants to offer a complete response to second Paragraph numbered 27 of the Complaint, the Defendants would have to conduct legal analysis or offer legal conclusions – which is not required. To the extent a further response is required, Defendants deny.

28. In order for Defendants to offer a complete response to Paragraph 28 of the Complaint, the Defendants would have to conduct legal analysis or offer legal conclusions – which is not required. To the extent a further response is required, Defendants deny.

29. In order for Defendants to offer a complete response to Paragraph 29 of the Complaint, the Defendants would have to conduct legal analysis or offer legal conclusions – which is not required. To the extent a further response is required, Defendants deny.

[Plaintiff's] Prayer for Relief

Section IX of the Complaint contains Plaintiff's prayer for relief. In response to all Paragraphs contained within Plaintiff's prayer for relief, the City denies that Plaintiff is entitled to recover any damages, compensation, and specific action from the Defendants, and Defendants assert that Plaintiff's request for a restraining order is unnecessary as Defendants do not intend to retaliate against any witness who may be involved in this lawsuit.

Defendants' Affirmative Defenses

By way of further response to Plaintiff's Complaint, the Defendants assert the following affirmative defenses.

1. Failure to State a Cause of Action. The Complaint and each and every cause of action purported to be set forth therein fails to allege facts sufficient to state a claim against the Defendants upon which relief can be granted.

2. No Punitive Damages. Defendants deny that punitive damages are available against Defendants.

3. Proximate Cause. The Defendants state that there is no causation between the acts or omissions alleged against the Defendants and the damages claimed to have been sustained by Plaintiff.

4. Failure to Mitigate Damages. In order to preserve the defense and ensure that it is not waived, the Defendants asserts that Plaintiff has failed and refused to take reasonable steps to remedy, cure, or mitigate his damages as alleged in the Complaint and he is, therefore, now

1 barred from any recovery in the present action as a result of and to the extent of such failure and
2 refusal.

3 5. Qualified Immunity. The individual Defendants are entitled to qualified
4 immunity under State and Federal law.

5 6. Reasonable and Lawful Actions. All actions by Defendants were performed in
6 good faith, were reasonable, were based on probable cause, and were within their lawful
7 authority.

8 7. No Respondent Superior under 42 USC 1983. The City of Tacoma cannot be
9 held liable under a *respondent superior* theory pursuant to 42 U.S.C. § 1983.

10 8. Apportionment relating to Plaintiffs' Contributory Negligence. The City alleges,
11 that pursuant to Chapter 4.22 RCW, Plaintiff's claimed damages should be apportioned among
12 all persons/entities deemed by the jury to be "at fault," whether parties to this action or not.

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14 Plaintiff's possible contributory negligence will operate to assign fault to Plaintiff. At
15 all times and places alleged in Plaintiff's Complaint, Plaintiff so careless and negligently
16 conducted himself that he contributed directly and proximately to his alleged injuries and
17 damages. Plaintiff's contributory negligence reduces any recovery against the Defendants (if
18 any) in an amount to be determined at trial. Further, Plaintiff's contributory negligence prevents
19 a finding of joint and several liability in this case.

20 9. Public Duty Doctrine. Plaintiff's negligence claims are barred by the Public Duty
21 Doctrine.

22 10. No Discrimination, Retaliation, or Unlawful Purpose. Defendants' conduct that
23 Plaintiff has put at issue in the above-captioned lawsuit was not based on any discriminatory,
24 retaliatory, or otherwise unlawful purpose.
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1 11. Negligence of Third Parties. The Defendants allege that Plaintiff's injuries may
2 have been caused, in whole or in part, by persons and/or entities over which the Defendants have
3 no control.

4 12. Not a Substantial Factor. The Complaint and each cause of action thereof may be
5 barred on the grounds that the Defendants' conduct referred to in the Complaint was not a
6 substantial factor in bringing about the injuries and damages complained of by Plaintiff.

7 13. Immunity from State Law Claims. RCW 4.24.420 provides that it is a "complete
8 defense to any [State law] action for damages for personal injury [...] that the person injured
9 [...] was engaged in the commission of a felony at the time of the occurrence causing the injury
10 [...] and the felony was approximate cause of the injury[.]" In order to avoid possible waiver of
11 this defense, Defendants assert that Plaintiff may have been engaged in a felony at the time of
12 the incident such that this defense is activated thereby creating a complete defense for
13 Defendants to the State law claims set out in the Complaint.

14 14. Statute of Limitations. Defendants assert that some or all of Plaintiff's claims and
15 causes of action set out in the Complaint are barred by the applicable statute of limitations.

16 15. Reservation. The Defendants reserve the right to amend this Answer to assert
17 additional affirmative defenses, cross-claims, counter-claims, and/or claims against third-party
18 defendants as further information becomes known through subsequent investigation and
19 discovery.
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1 DATED this 27th day of March, 2023.

2 WILLIAM C. FOSBRE, City Attorney

3 By: /s/ Barret Schulze
4 Barret J. Schulze, WSBA No. 45332
5 Deputy City Attorney
6 Attorney for Defendants City of Tacoma,
7 Anderson, and Komarovksy
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DECLARATION OF SERVICE

I hereby certify that on March 27, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. No Electronic Service Agreement is in place at this time so I will send a true and correct copy of this filing to the following via US Mail:

Attorneys for Plaintiff

Harold H. Franklin,
Attorney at Law
459 Seneca Ave NW
Renton, WA 98057

DATED March 27, 2023 at Tacoma, Washington.

/s/Gisel Castro

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